

TESTIMONY TO THE UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS  
REGARDING S. 2097,

THE "INDIAN TRIBAL CONFLICT RESOLUTION  
AND TORT CLAIMS AND RISK MANAGEMENT ACT OF 1998"

By Billy Frank, Jr., Chairman, Northwest Indian Fisheries Commission

July 15, 1998

Chairman Campbell and other Honorable Members of the Senate Indian Affairs Committee, I am Billy Frank, Jr., chairman of the Northwest Indian Fisheries Commission. In this capacity, I am the elected natural resources management spokesperson for the treaty Indian tribes of western Washington. The Commission I represent is an outstanding professional organization, based in Olympia, Washington, which supports the natural resource management programs of 20 sovereign Indian nations. As confirmed in the U.S. v. Washington Federal District Court decision of 1974, and reconfirmed by the United States Supreme Court, in 1979, the treaty Indian tribes in our state co-manage the great Pacific Northwest salmon resource with the state. In the capacity of co-managers we have amassed highly significant experiences which we feel can provide important insight and perspective to the legislation you are considering today.

Before I elaborate on these collective experiences, however, I would like to speak to you briefly about my own experiences as a tribal member from the Nisqually Tribe in the hope that my personal will also provide some helpful insight. I have lived on the Nisqually River all my life, experiences along with many of my closest relatives and fellow tribal members. The Nisqually River is a glacier fed river with its origins at Mt. Rainier. It travels about 90 miles into the southern end of Puget Sound. My father was born in a long house on that river just before Washington became a state. He was only a boy when a treaty was established between the tribe and the state, but he remembered well what life was like before most of the land was taken over by farmers, ranchers, timber barons and the non-tribal government. He remembered when fish and game, giant cedar trees and a great variety of natural vegetables and other plants provided ample sustenance for the entire tribe. He also remembered being taken away from his family and placed in a government boarding school, forbidden to speak his native language or practice his culture. He ran away from that school and made his way back to his family, on the river of his birth. He grew up there, on the Nisqually, where he continued to practice the customs he had been taught. And, he taught me the values of our heritage, even as we witnessed the massive destruction of our ancestral lands, the damming and pollution of our river and the assault on our traditional way of life by big business, entrepreneurs and government agents. Over the years we have suffered extensive exploitation of the natural resources and habitat upon which we had depended for our livelihoods and spiritual strength from time immemorial. In the 1960's, the invasion of our treaty-protected rights reached a pinnacle as the state began to arrest us on a frequent basis for exercising those rights.

That led to the U.S. v. Washington case, which the tribes won. In fact, we have won virtually every court case since then, and there have been many of them. Yet, the fish that my father and I have

loved so much have stopped coming to the Nisqually River and, like many tribes, most of our tribe's fishermen are unemployed. Still, we have hope. We hope that the fish will return to the river and that our way of life can co on. We hope that everyone who now lives in the state, and who chooses to do so, will be able to catch fish in the generations to come. We hope these things for good reasons. It is Nature's way for people to catch fish. They provide good nutrition and they culturally connect us with the planet that sustains us. By caring for the fish, teaching respect for them and building our lives around them, we retain a critical part of our past that can be passed on to the Generations to come. That's why we devoted ourselves, on the Nisqually, to building positive relations with the people of various vocations who live up and down the river. Together, as a team, we have cleaned up the river. We have shared our thoughts, desires and dreams together: Farmers, Ranchers, Politicians and Tribal Members. We found commonality in the goal of restoring and protecting the salmon resource, realizing, that none of us want the salmon to stay away forever.

My father is gone now, but his spirit is strong. The Indians of the Nisqually will not be put in government boarding schools. We will not tolerate assaults on our culture. We will speak our language if that is what we wish to do. And, we will remain devoted to the restoration of the salmon. The salmon has not returned yet, but we hope that it will, and we share that hope with our neighbors.

I come before you today specifically to support the conflict resolution portion of S. 2097, and particularly as it pertains to natural resource management. We appreciate the findings and purposes described in this bill, and we are that alternative dispute resolution can result in more expedited, less costly and less contentious results than litigation. We have always seen court as a last resort, and have deferred to it only when it was the only path remaining to us. We appreciate the acknowledgment that, in such extreme cases, the United States government must get actively involved in the role of trustee for the Indian tribes. But we also appreciate the proactive involvement of the United States described in this legislation. We further welcome the acknowledgment in this legislation that disputes can rise, not only from the perspectives of non-Indian government toward the tribes, but vice-versa as well.

It has, after all, always been our opinion that disputes should be settled between people and governments short of court. The problem has unfortunately been that court has generally been the one and only way we could get their attention. Our efforts to be heard have generally fallen on deaf ears. The natural resources which have always brought us life have fallen victim to everything, from canneries to the woodsman's ax through the years, and our objections summarily dismissed.

We, too, understand the great expense of litigation. We understand the wastefulness of conflict and polarization. But our history has too often been treated with disdain. Our culture has been too often misunderstood, and our treaties have been too often ignored.

Litigation has been our only edge as we have been surrounded by pollution-laden cities, as the spawning beds of our brother salmon have been filled with sediments and our life-giving waters diminished to a trickle.

Our hope is that S. 2097 will provide a legitimate alternative to many court cases. If it does, it is our hope that it will come with the force of Congress, standing up for the principles this bill

conveys. If it does, it will be implemented as a tool to bring our voices to the table, as governments and co-managers.

Historically, the tribes have always opted to work with the Federal and state governments in natural resource management, as well as other facets of life. In some cases, such efforts were initially accepted with open arms, as European immigrants found they needed our support to survive in the wilderness. Then, as they needed more land and resources, they simply took what they wanted and, under the guise of manifest destiny, they continued to take land and resources until there was little left for the original inhabitants. Treaties were used as tools to take even more. Then the treaties were disavowed and the practice of taking, from the tribes has continued ever since. Millions of Indians died in this process and human rights ignored from that day to this. The tribes finally learned to use the courts to protect their inherent rights, but have always done so as a last resort, consistently and persistently choosing instead to seek ways to live and work together. Following the U.S. v. Washington Decision of 1974, litigation, by necessity, became a way of life. Dozens and even hundreds of court cases took place, and the tribes nearly always won because the objectivity of court took precedence over the misinformation tactics and truth twisting that has always prevailed in the land and resources grabs of the past. About 15 years ago, however, the state of Washington and the treaty Indian tribes decided that they were both weary of litigation and determined, together, to opt toward the cooperative approach to natural resource management. The "New Era of Cooperation" was ushered in, and we became willing partners in natural resource management. The approach led to great mutual benefit. We all discovered that we could make far more progress toward common objectives through team effort than we ever could through confrontation. The cooperative management of the Pacific Northwest came into the national and even international spotlight. Government and non-government officials alike, came from across the continent and even the world to see for themselves how this concept worked. The frequent result was adoption of the process in other areas. From the Great Lakes region to Australia, cooperation and co-management were given new opportunities to function, particularly in the arena of natural resource management, and much good has resulted from these efforts in these regions.

In our own area, process after process developed, fashioned from the concept of cooperation and the principles of brotherhood. In Washington State's centennial year of 1989, the Governor of the state of Washington and the tribes even entered a *Centennial Accord*, which formally established a cooperative process for government-to-government relations across the board, with respect to all of our common objectives. Among other things, the *Accord* has resulted in the establishment of tribal liaison positions within the framework of state agencies and the Governor's Office, as many tri well as cooperative entities, ranging from the Joint Natural Resources Council to the State Volunteer Initiative for Salmon Recovery ("People For Salmon").

The most far-reaching cooperative agreement developing from the Era of Cooperation in our state was the Timber-Fish-Wildlife Agreement, or TFW, which brought the state and the tribes, as well as other stakeholders in forest management to the table. For more than a decade, the state and tribes have participated in TFW along with the timber industry and recreational and environmental organizations. The agreement remains alive today, and has been responsible for many historic teamwork-oriented agreements, and no doubt saved millions of dollars that would have otherwise been wasted in the all-too-often bottomless pit of litigation. Tribal participation continues to be a

critical component of TFW. The tribes offer a centuries-old tradition of resource stewardship, practice state-of-the-art technology and are strategically located to respond to the critical management needs of watersheds. For the tribes, one of the primary components in the success of TBV has always been the cooperative decision-making process. This consensus-based approach has empowered the tribes and acknowledged their government-level management authority regarding forest practices management. The five major goals embraced by all TFW participants are to, 1). Provide the greatest diversity of species and habitats for wildlife on forest lands; 2). Provide long term protection of habitat productivity for wild fish stocks; 3). Protect the water quality needs of people, fish and wildlife; 4). Inventory, evaluate, preserve, protect and ensure tribal access to traditional, cultural and archaeological sites in forest lands- and, 5). Assure sustainable growth and development of the state's forest products industry.

The involvement of the tribes and the TFW cooperators in a common enterprise is a remarkable achievement, unprecedented in the history of natural resource management. The tribes are committed to TFW because it offers the best chance for the success necessary to sustain the viability of timber, fish and wildlife resources for the benefit of generations to come.

We support the dispute resolution components of S. 2097 for similar reasons. We see a distinct correlation between the principles of this legislation and TFW-type processes. For Indian and non Indian Governments to successfully pursue common objectives in natural resource management, or education, economic diversification, child welfare or any other facets of life, we must all choose to live in an era of cooperation. To avoid confrontation and litigation, we must choose to understand one another. Dispute resolution must be based on the principles outlined in this bill, beginning with acknowledgment of the sovereign rights of the tribes. With these principles as a foundation, tribal and non-tribal Governments can enter the 21st Century as partners, working together with industry and environmental and other citizens' groups toward common objectives.

It is our hope that S. 2097 will bring us closer to the day when Indian children can never again be taken from their families or forbidden to be Indian, closer to the day when our sacred lands and resources are no longer open and fair game for non-Indian exploitation, and closer to the day when Indian and non-Indian people can work together--as brothers and sisters-- toward a better future.